

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.9620 OF 2019**

**ASHRUBA DADARAO WAGHMARE  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. V. D. Salunke  
AGP for Respondents/State: Mr. S. B. Pulkundwar  
Advocate for Respondent Nos.5-A & 5-B: Mr. S. R. Shirsat

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**CORAM : NITIN W. SAMBRE &  
S. G. CHAPALGAONKAR, JJ.**

**DATE : 11.04.2023**

**PER COURT :**

1. The petitioner, uneducated person, claims to be pursuing the petition through his son a power of attorney holder claiming ownership and possession over the land Survey No.10/Gat No.100 admeasuring 2 Hectare 42 R and Gat No.97 admeasuring 18 R situated at Village Kalsambar Taluka & District Beed. It is claimed that the aforesaid land was subjected to acquisition for public purpose for construction of a percolation tank. According to the petitioner, after Section 4 notification was issued on 3<sup>rd</sup> June, 2004, the award came to be passed on 9<sup>th</sup> August, 2005. According to the petitioner, Sections 4 & 6 notification in relation to Gat No.100 was not issued to him and the same was wrongly issued in the name of respondent No.5, who has no concerned whatsoever. According to him, a compensation of Rs.31960/- was paid to respondent No.5 which he has already withdrawn. His ownership via land Gat No.97 claimed to be submerged in water and the award was passed only to the extent of 7 R land with a

payment of compensation of Rs.4760/-. It is claimed that for balance land of 11 R, no compensation was paid. In this background, the petitioner is questioning not only the award dated 9<sup>th</sup> August, 2005 but also seeking quashment of the same with directions to the respondent/acquiring body to take recourse to fresh acquisition proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [hereinafter referred to as 'the Act, 2013' for short]. A writ of mandamus is prayed to pay compensation of the above referred land which was submerged from 2005-2006. A direction is sought against respondent No.1/Collector to conduct an inquiry in the fraud being practice by respondent No.2 and respondent No.5 in preparation of alleged bogus award.

2. So as to substantiate the claim for quashing of the award dated 9<sup>th</sup> August, 2005, Mr. Salunke, learned counsel for petitioner would urge that the petitioner, who is a senior citizen, is an uneducated person. According to him, it is only after his illiterate son got knowledge about the aforesaid illegality and fraud being practiced by respondent No.2 with respondent No.5, a petition is preferred. He would urge that though the land was shown to have been acquired in 2005, the fact remains that since 2004 i.e. on the date of passing of award till this date, the land stood mutated in the name of the petitioner and the fraud practiced by respondent no.5 in connivance with respondent no.2 is apparent via the award of compensation and withdrawal of the same. Mr. Salunke would urge that even if the award is questioned after a lapse of period of almost 14 years, the same will not cause any impediment in the assertion of the claim of the petitioner at belated stage in the backdrop of the pleadings of fraud.

3. Drawing support from the judgment of the Apex Court in the matter of **Tukaram Kana Joshi & Ors. Thr. Power of Attorney Holder Vs. M.I.D.C. and Ors.** reported in **AIR 2013 SC 565**, he would urge that the petitioner, an

uneducated person has every right to approach the Court and the Court should not refuse to exercise the jurisdiction merely on the ground of delay, as such, delay for the aforesaid reason can be condoned. He would rely on the observations in Paragraph Nos.12, 13, 14 & 15 of the said judgment.

4. Mr. Salunke, learned counsel for the petitioner has urged that his constitutional right under Article 300-A and Article 21 of the Constitution of India are infringed as the compensation for the land acquired from Gat No.97 to the extent of 7 R is paid and no compensation is paid for 11 R land. He has also claimed that though land Gat No.100 is owned by his father, the compensation to the extent of 47 R land was paid to respondent No.5 though he is not owner of the same. According to him, as such, the respondent has practiced fraud on the petitioner.

5. While opposing the aforesaid prayer, the learned Assistant Government Pleader would urge that the fact about the land of the petitioner was subjected to acquisition, the compensation was paid and it sufficiently establishes his knowledge about the land being affected by the implementation of the project in question. He would urge that apart from the fact that the award for the first time after almost a period of 14 years is questioned before this Court, preferring of representation will not bring the cause of the petitioner within limitation. Relying on the judgment of the Apex Court in the matter of **State of Maharashtra Vs. Digamber** reported in **AIR (1995) SCC 199**, he would urge that the petition suffers from delay and latches and as such, the same is liable to be dismissed.

6. We have appreciated the aforesaid submissions.

7. It is the case of the petitioner that he is owner of land Gat No.97, admeasuring 18 R which is entirely submerged. However, the compensation for only 7 R land was paid to the petitioner's father. It is claimed that for 11 R land from the aforesaid gat number, no compensation is paid.

8. In addition, his contentions are that out of land Gat No.100, 47 R land was acquired. However, no Section 4 or Section 6 notification or notice was served on the father of the petitioner and the award was passed in the name of a wrong person i.e. respondent No.5 to whom illegally compensation of Rs.31960/- was paid. As such, according to the learned counsel for the petitioner, directions need to be issued to the respondents not only to take out fresh proceedings for acquisition but also for causing an inquiry against the respondents/authorities for passing the award in the name of wrong person i.e. respondent No.5 though the revenue record of the land acquired stood in the name of the petitioner's father.

9. The fact remains that the petitioner has given following admissions:

*"6) The petitioner submits that so far land Gut No.97 is concerned, total land admeasuring 18 R is acquired and submerged under the water; not only that land Gut No.96, which is above Gut No.97 is also partly acquired and submerged under the water. However, under the award it is shown that only 7 R land is acquired for the project and compensation of Rs.4760/- was paid to the petitioner and no compensation of total and i.e. remaining land of 11 R was sanctioned nor paid to the petitioner.*

*7) The petitioner submits that though the lands are acquired under the award dated 09.08.2005 and those are submerged from the year 2005-2006 onwards continuously and water is stored. Till today the name of Government is not mutated in the record of rights. However, till today 7/12 extracts are in the name of land holders, in the case of Gut No. 97 and 100, those are in the name of petitioner. It shows that Government is not maintaining the record properly and thereby agriculturists are sufferers. The copies of recent 7/12 extracts of the year 2015-2016 to 2017-2018 is annexed here at Exhibit "D" collectively."*

10. The perusal of the aforesaid pleadings primarily demonstrates that the fact about there being award in relation to land Gat No.97 to the extent of 7 R land was a fact well within his knowledge as the compensation for the acquired land to the extent of 7 R was received way back. As far as land Gat No.100 is concerned, it is the case of the petitioner that though the award was passed in relation to the said land,

the revenue entries are in the name of the petitioner, the compensation was paid to respondent No.5 by respondents/revenue authorities by practicing fraud.

11. The aforesaid admissions on the part of the petitioner that the land remains submerged from the date of taking over the possession sufficiently establishes a fact that the petitioner was aware about not only submergence of his land way back in 2005 when the award was passed but also about there being acquisition proceedings.

12. From 2005, till this date, the petitioner has kept mum and is not giving any explanation but for his contention that he is an uneducated person. The petitioner is aged about 65 years whereas his son/power of attorney holder is 29 years. The petition is being pursued through the Power of Attorney holder. As such, it cannot be said that the petitioner having received compensation for the land Gat No.97 was not aware about the incorrect award being passed in favour of respondent No.5 or was not aware about his land to the extent of 11 R out of Gat No.97 was affected by the project in question.

13. It is only after the 2013 Act, the petitioner by way of afterthought has preferred this petition so as to have four times compensation from the respondents.

14. In view of above, it has to be held that the petitioner has approached this Court at much belated stage without there being any sufficient cause being cited in support of the oral prayer for condonation of delay. The petitioner though has got support from the judgment of the Apex Court in the matter of *Tukaram Kana Joshi & Ors. Thr. Power of Attorney Holder Vs. M.I.D.C. and Ors. (Supra)*, the said judgment in

Paragraph Nos.10, 11 and 12 has categorically observed that even if there is no period of limitation prescribed for the Court to exercise the powers under Article 226 of the Constitution, however, the Court cannot interfere in the matter unless the petitioner is able to demonstrate that in spite of he being having knowledge, has sufficient cause for not approaching the Court asserting his right to get compensation. As such, the contention of the counsel for the petitioner that his constitutional and statutory right to property, which is also a human right is violated cannot be accepted at a belated stage i.e. after a period of 14 years. Paragraph No.10 of the aforesaid judgment is worth referring. The right under Article 226 can be asserted by the petitioner so as to prevail upon this Court to exercise discretionary jurisdiction in his favour. However, while exercising such jurisdiction, the petitioner must demonstrate litigating factors, continuity of cause of action etc. which he has failed to.

15. That being so, no case for causing interference is made out. The petition as such stands dismissed.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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